

FILED

JAN 02 2013

Clerk, U.S. District Court
District Of Montana
Missoula

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BUTTE DIVISION

CANDACE LYNNE ALIKHAN,) CV 12-06-BU-DLC-CSO

)

Plaintiff,)

)

vs.) ORDER

)

BAYVIEW LOAN SERVICING,)

LLC, NORTHWEST TRUSTEE)

SERVICES, INC., FIRST)

AMERICAN TITLE)

INSURANCE COMPANY,)

E*TRADE BANK,)

)

Defendants.)

)

Defendant Bayview Loan Servicing, LLC filed a motion to dismiss (doc. 7)

which is pending in this matter. United States Magistrate Judge Carolyn S. Ostby entered Findings and Recommendation on November 1, 2012, recommending

granting the motion and dismissing this entire action without prejudice. The parties did not timely object to the Findings and Recommendation, and so have waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Judge Ostby found that Plaintiff Candace Lynne Alikhan has not attempted to comply with Rule 4 despite being advised of the applicable rules over three months ago. Further, it has been over ten months since the Complaint was filed and the record contains no mention that summons have been requested or any filing of proof of service as to any of the Defendants. After a review of Judge Ostby’s Findings and Recommendation, I find no clear error. Accordingly,

IT IS HEREBY ORDERED that Judge Ostby’s Findings and Recommendation (doc. 21) are adopted in full. Defendant Bayview’s motion to dismiss (doc. 7) is GRANTED, WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that this action is DISMISSED WITHOUT PREJUDICE with respect to all other named Defendants.

Dated this 2nd day of January, 2013.


Dana L. Christensen
Dana L. Christensen, District Judge
United States District Court